

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

H. DAVID ROY,

Appellant,

v.

MBW CONSTRUCTION, INC.,

Respondent.

DOCKET NUMBER WD77615

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 3, 2015

APPEAL FROM

The Circuit Court of Clay County, Missouri
The Honorable Daren L. Adkins, Judge

JUDGES

Division Three: Ellis, P.J., and Mitchell and Witt, JJ.

CONCURRING.

ATTORNEYS

Stephen W. Nichols
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Attorney for Appellant,

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Liberty, MO

Attorneys for Respondent.

- # MISSOURI APPELLATE COURT OPINION SUMMARY
- ## MISSOURI COURT OF APPEALS, WESTERN DISTRICT

3. Equitable estoppel arises from the unfairness of allowing a party to belatedly assert known rights on which the other has, in good faith, relied thereby and become disadvantaged.
4. Roy is equitably estopped from claiming breach of contract related to construction of the garage and laundry area because, by his silence and acceptance of the deed, Roy represented to MBW that he was satisfied with the garage and laundry area as built.
5. A new trial should not be awarded on the ground of newly discovered evidence unless the moving party first satisfies the following prerequisites: (1) the evidence has come to his knowledge since the trial; (2) his failure to learn of such evidence sooner was not due to want of diligence; (3) such evidence is so material that it probably would produce a different result if the new trial were granted; (4) it is not cumulative only; (5) the object of the testimony is not merely to impeach the character or credit of a witness; and (6) the affidavit of the witness himself is produced or its absence accounted for.
6. Roy was not entitled to a new trial on his claim of newly discovered evidence because he made no allegation or showing that his failure to discover this evidence earlier “was not due to want of diligence,” and the object of the evidence was merely to impeach the character or credit of the defendant, as it did not go to any of the counts raised in the petition.

Opinion by: Karen King Mitchell, Judge

November 3, 2015

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